

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-1972
)
ALAINE S. CHEVALIER,)
)
 Respondent.)

)

RECOMMENDED ORDER

On August 4 and 5, 2009, a formal administrative hearing was conducted in Bradenton, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert J. Shapiro, Esquire
Manatee County School Board
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For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Manatee County School Board (Petitioner) has just cause to terminate the employment of Alaine S. Chevalier (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated March 27, 2009, the Petitioner alleged that on February 6, 2009, the Respondent slapped the upper leg of a female student in class for not sitting "lady-like." The complaint further alleged that, on January 8, 2009, a "severe reprimand" had been issued to the Respondent for an incident of "excessive force and unauthorized corporal punishment" towards a student on October 31, 2008.

The Respondent denied the allegations and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

On July 24, 2009, the parties filed a Joint Pre-hearing Stipulation, including stipulated facts that have been incorporated herein as necessary.

At the hearing, the Petitioner presented the live testimony of eight witnesses, the deposition testimony of two witnesses, and had Exhibits 1 through 6 and 8 through 15 admitted into evidence. The Respondent testified on her own behalf, presented the testimony of four witnesses, and had Exhibits 1 through 5 admitted into evidence.

A Transcript of the hearing was electronically filed on September 9, 2009. Prior to the deadline for filing proposed orders, counsel for the Petitioner became unavailable. On

September 17, 2009, Notices of Appearance on behalf of the Petitioner were filed by substitute counsel, as well as a Motion for Extension of Time seeking to extend the deadline for filing proposed orders. On September 18, 2009, the motion was granted. On October 5, 2009, both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner has employed the Respondent as a teacher since 1995. During the 2008-2009 school year, the Respondent was assigned to teach math at Buffalo Creek Middle School (BCMS).

2. The principal at BCMS was Scott Cooper. During the fall of 2008, Mr. Cooper became concerned about the Respondent's ability to control her classroom and provide appropriate instruction to her students based on negative comments from parents and other staff members about the Respondent's ability to manage the classroom.

3. After informally observing the situation in the Respondent's classroom, Mr. Cooper obtained a math specialist employed by the Manatee County School District to provide instructional assistance to the Respondent.

4. Despite the assistance, Mr. Cooper remained dissatisfied with the Respondent's performance. In

October 2008, Mr. Cooper met with Meghan Murray, the chair of the BCMS math department, and Sharon Scarbrough, his assistant principal, to discuss his concerns about the Respondent's performance.

5. During the meeting, Mr. Cooper decided to merge the classes taught by the Respondent with those taught by Ms. Murray. The intent of the merge was to permit Ms. Murray to handle the class instruction while the Respondent provided support. Mr. Cooper also believed the merge would allow the Respondent to benefit from observing Ms. Murray's teaching methods.

6. Mr. Cooper met with the Respondent and Ms. Murray and discussed the merge. The Respondent was amenable to the idea of "team teaching," and, shortly thereafter, the two classes were combined.

7. The original class rosters remained separate with each student listed on the roster of his or her original teacher, but the instruction took place in a joint classroom, generally led by Ms. Murray.

8. Although the classroom environment improved when both teachers were present, the Respondent still had difficulty controlling the large group of students and providing instruction in Ms. Murray's absence.

9. On January 8, 2009, Mr. Cooper issued a severe written reprimand for use of "excessive force" against a student on October 31, 2008. The reprimand advised that recurrence could subject the Respondent to additional disciplinary action, including termination of employment. Although the Respondent denied the incident underlying the reprimand, clearly, the Respondent was made aware that such physical contact with a student was unacceptable and could result in further disciplinary action.

10. The reprimand also directed the Respondent to contact "Peggy Wolfe" for "classroom assistance" and returned the Respondent to "documentation" apparently related to continuing concerns about the Respondent's job performance. Returning a teacher to "documentation" permits school officials to formally observe and evaluate a teacher's job performance.

11. Mr. Cooper was apparently not the only person concerned about the Respondent's ability to provide appropriate instruction to her students. On or about January 30, 2009, Mr. Cooper met with the mother of S.T., a student assigned to the Respondent's roster, who believed that her child was still not learning from the Respondent, even after the Respondent's students were combined with Ms. Murray's class.

12. A few days after S.T.'s mother met with Mr. Cooper, the Respondent admonished S.T. for talking in class and told the

student that she would report the student's behavior directly to the mother "who just came in here and yelled at me."

13. On February 6, 2009, Ms. Murray was absent from the combined classroom. The students were unruly, and the Respondent was unable to manage them. S.T. sat at a table talking to classmates. The Respondent decided to separate S.T. from her friends and directed S.T. to move to another table nearby. Thereafter, the Respondent continued her unsuccessful attempts to maintain control over the classroom, while circulating through the room to assist students in completing tasks.

14. As the Respondent later passed the table where S.T. sat, she observed S.T. sitting in a slanted position with her legs together and apparently extended from under the table. The Respondent slapped S.T.'s left leg just above the knee and directed her to "sit like a lady." The Respondent then picked up S.T.'s jacket and heavy backpack from the floor and dropped them on the table where S.T. was sitting.

15. At the hearing, the student testified that the slap caused pain described as similar to a "pinch." After class was dismissed, S.T. went into a restroom to lower her jeans and look at her leg and saw a red "puffy" mark at the location of the slap.

16. S.T. and two friends who observed the incident then went to the office of S.T.'s guidance counselor. The counselor directed the student's friends to return to class and not to discuss the incident with others. The counselor then reported the incident to Mr. Cooper.

17. Mr. Cooper immediately came to the counselor's office where S.T. told Mr. Cooper what had occurred. Mr. Cooper asked the student to write a statement and then directed her to the school clinic where a nurse was present.

18. At about 11:30 a.m., the school nurse observed the location of the slap and noted a red area approximately four inches by five inches on the student's left leg just above the knee. The nurse directed the student to return to class and reported her observations to Mr. Cooper.

19. Mr. Cooper reported the incident to an investigator for the Petitioner's Office of Professional Standards, who directed that photographs of the student's leg be obtained. The student returned to the clinic. At about 12:30 p.m., the school nurse photographed the mark, which by that time had faded to a light pink color.

20. On February 6, 2009, the Respondent was placed on paid administrative leave.

21. At the hearing, Mr. Cooper testified that he believed the fact that the slap through S.T.'s jeans left a mark on the

student's leg indicated that the force used was excessive and that the Respondent's effectiveness as an employee of the school was impaired by the incident. He also expressed concern about her behavior in light of the severe reprimand that had been issued a few weeks earlier. Mr. Cooper's testimony has been fully credited.

22. Tim McGonegal, the superintendent of the Manatee County School District, testified at the hearing that the Petitioner's policies prohibit corporal punishment of any kind, including spanking. He testified that the fact that the February 6, 2009, incident occurred within a few weeks of a reprimand for corporal punishment indicated that the behavior would be repeated and that further progressive discipline would be unproductive. Mr. McGonegal also testified that the Respondent's effectiveness in the classroom was impaired by the incident and that he had no confidence in her ability to manage and maintain control over the students in her classroom. Mr. McGonegal's testimony has been fully credited.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

24. The Petitioner has the burden of proving by a preponderance of the evidence the allegations underlying the

proposed termination of the Respondent's employment as set forth in the Administrative Complaint. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). The burden has been met.

25. At all times material to this case, the Respondent was employed by the Petitioner as a member of the instructional staff. Subsection 1012.33(1)(a), Florida Statutes (2008), states that persons so employed may be dismissed during the term of the contract only for just cause and provides as follows:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education:
immorality, misconduct in office,
incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

26. Subsection 6.11(1) of the Policies and Procedures Manual of the School District of Manatee County provides as follows:

Suspension or Termination of Employees:

Any employee of the School Board may be temporarily suspended, with or without pay, or permanently terminated from employment, for just cause including, but not limited to, immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policy and Procedures

Manual of the School District of Manatee County, violation of any applicable Florida statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

27. Florida Administrative Code Rule 6B-4.009 provides the following relevant definitions:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

28. The Code of Ethics of the Education Profession in Florida, set forth at Florida Administrative Code Rule 6B-1.001, provides as follows:

6B-1.001 Code of Ethics of the Education Profession in Florida.

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

29. The Principles of Professional Conduct for the Education Profession in Florida are set forth at Florida Administrative Code Rule 6B-1.006 and provide, in relevant part, as follows:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

30. The evidence establishes that in slapping a student on February 6, 2009, the Respondent committed misconduct in office

by violating the Principles of Professional Conduct for the Education Profession in Florida. The Respondent failed to make a reasonable effort to protect the student from conditions harmful to learning and the student's health and exposed the student to unnecessary embarrassment or disparagement. The evidence establishes that the misconduct is sufficiently serious to impair the Respondent's effectiveness in the school system.

31. Additionally, the Respondent violated the Petitioner's policy prohibiting corporal punishment, despite having been reprimanded on such basis on January 8, 2009. The violation is sufficient under Subsection 6.11(1) of the Policies and Procedures Manual of the School District of Manatee County to warrant termination of employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Manatee County School Board enter a final order, terminating the employment of Alaine S. Chevalier.

DONE AND ENTERED this 17th day of November, 2009, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 17th day of November, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.